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Prepared October 1, 2021 for October 15, 2021 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Kevin Kahn, Central Coast District Supervisor

Subject: San Luis Obispo County LCP Amendment Number LCP-3-SLO-21-0027-1-Part F (Los Osos Vacation Rentals)

SUMMARY OF STAFF RECOMMENDATION

San Luis Obispo County proposes to amend the Local Coastal Program's (LCP) Implementation Plan (IP) regarding vacation rentals to apply specific requirements to the unincorporated community of Los Osos, which is located along the shores of Morro Bay in the 'back bay' area. The LCP currently allows vacation rentals throughout the coastal zone, with specific requirements applicable within the unincorporated communities of Cayucos, Cambria, and Avila Beach. These requirements include "good neighbor" operational standards (such as noise and guest limits, required off-street parking, and a local contact person in case of complaints) as well as density limits so as not to oversaturate particular neighborhoods or blocks with vacation rentals. The proposed amendment would add specific rules for Los Osos vacation rentals into the LCP's vacation rental provisions, including these same types of general operational standards as well as to limits specific to Los Osos. On the latter, the proposed amendment would cap vacation rentals at a total of 55 in Los Osos, and would require that new vacation rentals be located at least 500 feet from other vacation rentals or from overnight lodging accommodations (such as motels, hotels, and bed-and-breakfast inns).

The proposed amendment's 55-unit cap and 500-foot buffer requirements raise some concerns with respect to conformance with LUP requirements to maximize public recreational access, including in terms of prioritizing visitor accommodations, including as it is one of the more limiting versions of such caps and buffers that the Commission has considered (and is significantly more limiting than the rules that apply to other areas of the County).¹ However, in this case such limits can be found acceptable for several reasons. First, the County estimates that there are 38 vacation rentals in Los Osos, so

¹ The proposed 500-foot buffer for Los Osos is over twice as large as the 200-foot buffer required in Cambria, five to 10 times as large as the 50-to-100-foot buffers required in Cayucos, and 10 times as large as the 50-foot buffers applied in Avila Beach.

the proposed amendment would allow an additional 17 vacation rentals, or about a 45 percent increase in vacation rentals over existing conditions. At the same time, however, the 500-foot buffer means that such rentals would actually decrease over time nearest the shoreline, and thus it may be that rentals actually decrease over time unless vacation rentals were to be established in more inland locations. At any rate, it would appear that the Los Osos vacation rental market would probably stay about at current levels at the least, or somewhere close to that. And that makes sense, as the market here in Los Osos is slightly different than other communities in the County, where visitors to Los Osos are typically looking for a more low-key visitor experience focused on back bay offerings (like kayaking) and the slower pace that Los Osos generally provides, and it is not an area where it would make sense to substantially increase vacation rentals.

Second, Los Osos is a community that continues to try to establish a sustainable water source, which has been hindered by questions regarding groundwater basin safe yield, as well as by historic nitrate contamination and seawater intrusion. As a result, new development in Los Osos, including new residential development, has been curtailed as a result of public service limitations (and other issues, such as wastewater disposal and protection of ESHA). Thus, the County here is trying to balance visitor-serving accommodation needs with the need to provide housing opportunities for longer term residential purposes in an area where development options are currently limited. Should circumstances change with respect to development constraints it may be that the balance could be reconsidered,² but at the current time this balance seems appropriate. And third, homestays (i.e., whereby visitors rent a room or rooms in a home occupied by the owner/resident) will continue to remain available in Los Osos without a cap (i.e., the LCP regulates homestays separately from vacation rentals and homestays are not subject to the proposed cap/buffer). In addition, while not a significant number, Los Osos provides for a variety of other overnight lodging opportunities, including camping opportunities at nearby Montaña de Oro State Park.

Finally, the County undertook an extensive community planning process to develop vacation rental regulations that respond to and address the unique context of Los Osos. While all such ordinances can be complex in terms of finding an appropriate balance between providing for important visitor-serving accommodations while protecting community character and housing opportunities, and while reasonable people can and do disagree about where that balance is, staff believes the County's proposal here adequately and appropriately finds that balance given Los Osos' unique context. Staff thus recommends that the Commission find the proposed amendment consistent with

² The County has submitted a proposed Los Osos Community Plan LCP update to the Commission for consideration that is intended to provide a framework for potential future development (including increased residential development) in the community that can adequately and appropriately address water, wastewater, ESHA and other development constraints. That Plan is currently tentatively scheduled to come before the Commission in early 2022, and its final disposition could materially affect how to understand the ways in which development is to be balanced and provided in the community going forward.

and adequate to carry out the policies of the LUP, and that the Commission approve the amendment as submitted. The motion and resolution are found on page 5 below.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on September 2, 2021. The proposed amendment affects the LCP's IP, and the 60-working-day action deadline is December 1, 2021. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until December 1, 2021 to take a final action on this LCP amendment.

Therefore, if the Commission does not to take a final action in this case (e.g., if the Commission instead chooses to postpone/continue LCP amendment consideration), then staff recommends that, as part of such non-final action, the Commission extend the deadline for final Commission action on the proposed amendment by one year. To do so, staff recommends a YES vote on the motion below. Passage of the motion will result in a new deadline for final Commission action on the proposed LCP amendment. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion: I move that the Commission extend the time limit to act on San Luis Obispo County Local Coastal Program Amendment Number LCP-3-SLO-21-0027-1 Part F to December 1, 2022, and I recommend a yes vote.

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EXHIBITS

Exhibit 1: Proposed IP Amendment (shown in strikethrough and underline)

1. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, certify the proposed LCP amendment as submitted. The Commission needs to make one motion in order to act on this recommendation, and staff recommends a **NO** vote on the motion below. Failure of this motion will result in certification of the Implementation Plan amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion to Certify: *I move that the Commission reject Implementation Plan Amendment LCP-3-SLO-21-0027-1 Part F as submitted by San Luis Obispo County, and I recommend a **no** vote.*

Resolution to Certify: *The Commission hereby certifies Implementation Plan Amendment LCP-3-SLO-21-0027-1 Part F for San Luis Obispo County and adopts the findings set forth below on the grounds that the amended Implementation Plan conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the amended Implementation Plan complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

2. FINDINGS AND DECLARATIONS

A. Proposed LCP Amendment Description

The proposed amendment would modify the Local Coastal Program's (LCP) Implementation Plan (IP) to establish new regulations for vacation rentals in the unincorporated community of Los Osos, which is located along the shores of Morro Bay in the 'back bay' area. The LCP currently allows vacation rentals throughout the coastal zone, with both general "good neighbor" operational standards (such as noise and guest limits, required off-street parking, and a local contact person in case of complaints) as well as specific requirements for vacation rental use in the communities of Cambria, Cayucos, and Avila Beach (including numeric caps and distance requirements between vacation rentals and other visitor accommodations). The proposed amendment would add specific rules for Los Osos vacation rentals into the LCP's vacation rental provisions, including the same types of general operational standards as well as to limits specific to Los Osos. On the latter, the proposed amendment would cap vacation rentals at a total of 55 in Los Osos, and would require that new vacation rentals be located at least 500 feet from other vacation rentals or from overnight lodging accommodations (such as motels, hotels, and bed-and-breakfast inns).³ The proposed

³ The amendment only applies to whole-house vacation rentals; homestays (defined in the LCP as the rental of up to two rooms in a single-family residence for up to seven days with the remainder of the

amendment requires a CDP to establish a vacation rental in Los Osos, and allows one such rental per natural person, limited liability company, or personal family trust. Finally, vacation rentals would only be allowed within existing single-family residences, and would not be allowed accessory dwelling units, multi-family dwellings or mobile home parks. See Exhibit 1 for the proposed LCP changes.

B. Proposed LCP Amendment Consistency Evaluation

Standard of Review

The proposed amendment affects the LCP's IP, and the standard of review for IP amendments is that they must conform with and be adequate to carry out the policies of the LCP's certified LUP.

Applicable Land Use Plan Policies

The LCP's LUP contains objectives and policies that provide for visitor-serving uses, with the intent of maximizing coastal access and providing appropriate upland support facilities, such as vacation rentals, directed towards coastal zone visitors, including:

LUP Recreation and Visitor-Serving Facilities Policy 1: Recreation

Opportunities. Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means. ...

LUP Recreation and Visitor-Serving Facilities Policy 2: Priority for Visitor Serving Facilities.

Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent use, but not over agriculture or coastal dependent industry in accordance with PRC 30222. All uses shall be consistent with protection of significant coastal resources. The Land Use Plan shall incorporate provisions for areas appropriate for visitor-serving facilities that are adequate for foreseeable demand. ...

LUP Recreation and Visitor-Serving Facilities Policy 3: Low Cost Facilities.

Larger visitor-serving projects shall make provisions for services which are geared to a range of costs, including low cost facilities.

LUP Shoreline Access Policy 4: Provision of Support Facilities and Improvements.

Facilities necessary for public access shall be provided. ...

LUP Shoreline Access Policy 8: Minimizing Conflicts with Adjacent Users.

Maximum access shall be provided in a manner which minimizes conflicts with adjacent uses. Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.

house used by the family in residence) are not affected by this amendment and may continue to operate without numerical cap or buffer requirements.

With respect to public services, LUP Public Works Policy 1 states that the amount, location, and rate of development must be kept within the sustainable capacity of resources, public services, and public facilities. And LUP Public Works Policy 6 provides that where there are identified public service limitations, priority uses under the Coastal Act take precedence over non-priority uses. LUP Public Works Policies 1 and 6 state:

LUP Public Works Policy 1: Availability of Service Capacity. *New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable.*

LUP Public Works Policy 6: Resource Management System. *The county will implement the Resource Management System to consider where the necessary resources exist or can be readily developed to support new land uses. Permitted public service expansions shall ensure the protection of coastal natural resources including the biological productivity of coastal waters. In the interim, where there are identified public service limitations, uses having priority under the Coastal Act shall not be precluded by the provision of those limited services to non-priority uses.*

And the LUP also protects special communities and their unique character, including identifying the Baywood Village commercial area of Los Osos as a special community⁴:

LUP Visual and Scenic Resources Policy 6: Special Communities and Small-Scale Neighborhoods. *Within the urbanized areas defined as small-scale neighborhoods or special communities, new development shall be designed and sited to complement and be visually compatible with existing characteristics of the community, which may include concerns for the scale of new structures, compatibility with unique or distinguished architectural historical style, or natural features that add to the overall attractiveness of the community.*

And finally, the LCP's Estero Area Plan is also a component of the LUP, and it includes additional specific standards for Los Osos, including identifying the vision for this stretch of the County's coast:⁵

Provide maximum public access, and protect existing public access, to the coast, the shoreline, the bay, and public recreation areas, consistent with the need to protect natural and agricultural resources and private property rights.

⁴ As defined in IP Section 23.11's definition for 'Special Communities.'

⁵ Estero Area Plan Vision and General Goals A.1, Page 1-7.

In short, mirroring the Coastal Act's same directives, the LUP seeks to maximize public recreational access by, among other things, prioritizing visitor-serving development such as overnight accommodations (particularly lower-cost ones) over other types of development, but doing so in a manner that respects community character and other coastal resources, as well as the physical capacity (e.g., water, wastewater, ESHA, circulation, etc.) of the community to sustain such use.

Consistency Analysis

The opportunity to rent residences within California's coastal communities represents one way in which California residents and visitors enjoy the coast. In some instances, residential vacation rentals may provide a lower-cost alternative to renting hotel or motel rooms for large families or groups of individuals. In all cases, vacation rentals increase the range of options available to coastal visitors, oftentimes in residential areas along the immediate shoreline where there may not be other significant commercial overnight opportunities. In this context, proposals to regulate vacation rentals have the potential to conflict with the LUP's objectives to protect access and recreational opportunities, and to also conflict with the LUP's prioritization of visitor-serving commercial facilities. Proposals to regulate such rentals, though, also can be vehicles to help ensure that such rental uses appropriately address other LCP objectives as well, such as protecting community character. Thus, the regulation of residential vacation rentals plays an important role in implementing LUP policies by ensuring that type of visitor-serving use is conducted in a manner that protects access, coastal resources, and the integrity of residential communities.

As with other communities across the state developing vacation rental regulations, the County undertook an extensive community planning process, including through the Los Osos Community Advisory Council,⁶ to help understand the community's perspective about issues raised by vacation rentals, and to help solicit community ideas on ways to regulate such rentals in Los Osos. While some community members advocated for more vacation rentals, and some for none, many others in the community looked to ways to allow vacation rentals while addressing the types of issues they can present in residential settings, including in terms of residential housing stock. Ultimately, the Advisory Council recommended including both a 55 vacation rental unit cap (which is equivalent to one percent of the existing single-family residences in Los Osos)⁷ as well as a 500-foot buffer between vacation rentals, as well as between vacation rentals and other visitor-accommodations. The Board of Supervisors ultimately agreed with these provisions, even though they were significantly more restrictive than similar vacation rental provisions applicable to the unincorporated Cambria, Cayucos, and Avila Beach areas also covered by the LCP.

First, and as an initial matter, the proposed amendment's 55-unit cap and 500-foot buffer requirements raise some concerns with respect to conformance with LUP

⁶ The Los Osos Community Advisory Council is an 11-member volunteer group that advises the San Luis Obispo County Board of Supervisors, the County's Planning Commission, and County planning staff on land use planning and other important issues that affect Los Osos.

⁷ According to the County there are approximately 5,500 single-family residences in the Los Osos.

requirements to maximize public recreational access, including in terms of prioritizing visitor accommodations, including as it is one of the more limiting versions of such caps and buffers that the Commission has considered (and is significantly more limiting than the rules that apply to other areas of the County).⁸ However, in this case such limits can be found acceptable for several reasons. First, the County estimates that there are 38 vacation rentals in Los Osos, which will continue to be allowed to operate irrespective of potential buffer issues,⁹ so the proposed amendment would allow an additional 17 vacation rentals, or about a 45 percent increase in vacation rentals over existing conditions. At the same time, however, the 500-foot buffer means that such rentals would actually decrease over time nearest the shoreline (i.e., due to 19 of the 38 vacation rentals already being within 500 feet of each other in this area), and thus it may be that rentals actually decrease over time unless vacation rentals were to be established in more inland locations. At any rate, it would appear that the Los Osos vacation rental market would probably stay about at current levels at the least, or somewhere close to that. And that makes sense, as the market here in Los Osos is slightly different than other communities in the County, where visitors to Los Osos are typically looking for a more low-key visitor experience focused on back bay offerings (like kayaking) and the slower pace that Los Osos generally provides, and it is not an area where it would make sense to substantially increase vacation rentals.

Second, Los Osos is a community that continues to try to establish a sustainable water source, which has been hindered by questions regarding groundwater basin safe yield, as well as by historic nitrate contamination and seawater intrusion. As a result, new development in Los Osos, including new residential development, has been curtailed as a result of public service limitations (and other issues, such as wastewater disposal¹⁰ and protection of ESHA). Thus, the County here is trying to balance visitor-serving accommodation needs with the need to provide housing opportunities for longer term residential purposes in an area where development options are currently limited. Should circumstances change with respect to development constraints it may be that the

⁸ The proposed 500-foot buffer for Los Osos is over twice as large as the 200-foot buffer required in Cambria, five to 10 times as large as the 50-to-100-foot buffers required in Cayucos, and 10 times as large as the 50-foot buffers applied in Avila Beach.

⁹ The County indicates that 19 of the 38 vacation rentals are currently located within the proposed 500-foot buffer. Under this amendment, those rentals could continue to operate as long as their permits remained valid, and until such properties changed hands, at which time their permits would no longer be effective and would need to be reestablished (if they could meet the 55 unit cap and the 500-foot buffer requirements at that time).

¹⁰ Coastal Commission CDP A-3-SLO-09-055/069, which authorized the construction of a wastewater treatment plant in Los Osos in 2010, also prohibits wastewater service to serve new growth in Los Osos and instead only allows connections for existing development unless and until the LCP is amended to identify appropriate and sustainable development controls for Los Osos. The County has submitted a proposed Los Osos Community Plan LCP update to the Commission for consideration that is intended to provide just such a framework for potential future development (including increased residential development) in the community that can adequately and appropriately address water, wastewater, ESHA and other development constraints. That Plan is currently tentatively scheduled to come before the Commission in early 2022, and its final disposition could materially affect how to understand the ways in which development is to be balanced and provided in the community going forward

balance could be reconsidered (e.g., through an updated Los Osos Community Plan), but at the current time this balance seems appropriate.

Third, homestays (i.e., whereby visitors rent a room or rooms in a home occupied by the owner/resident) will continue to remain available in Los Osos without a cap (i.e., the LCP regulates homestays separately from vacation rentals and homestays are not subject to the proposed cap/buffer). In addition, while not a significant number, Los Osos provides for a variety of other overnight lodging opportunities, including camping opportunities at nearby Montaña de Oro State Park.

Finally, as described above, the County undertook an extensive community planning process to develop vacation rental regulations that respond to and address the unique context of Los Osos. While all such ordinances can be complex in terms of finding an appropriate balance between providing for important visitor-serving accommodations while protecting community character and housing opportunities, and while reasonable people can and do disagree about where that balance is, the Commission finds that the County's proposal here adequately and appropriately finds that balance given Los Osos' unique context. Thus, for all the reasons discussed above, the proposed IP amendment can be found consistent with and adequate to carry out the certified LUP.

C. California Environmental Quality Act (CEQA)

Section 21080.9 of the California Public Resources Code (within the California Environmental Quality Act (CEQA)) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of LCPs and LCP amendments. Instead, the CEQA responsibilities are assigned to the Coastal Commission. However, the Commission's LCP and LCP amendment review program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP or LCP amendment action.

Nevertheless, the Commission is required, in approving an LCP or LCP amendment submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions.¹¹ Here, San Luis Obispo County's LCP amendment consists of an IP amendment. The County found that, under CEQA Guideline Section 15061(b)(3), the proposed LCP amendment is not subject to CEQA because it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The County determined that no possibility exists that the amendment may have a significant effect on the environment. This report has discussed the relevant coastal resource issues with the proposal and has addressed all

¹¹ Including the requirement in CEQA Section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment (see California Code of Regulations Title 14 Sections 13540(f) and 13555(b)).

comments received. All above findings are incorporated herein in their entirety by reference.

Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts, and the proposed IP amendment conforms with CEQA.